

Limited Authorities Cooperative Agreement Between
United States Fish & Wildlife Service and
Arkansas Game and Fish Commission

This Cooperative Agreement is entered into pursuant to section 6(c) of the Endangered Species Act of 1973, as amended 16 U.S.C. §§ 1531-43 (hereinafter referred to as “the Act”), and Amendment 35 to the Constitution of the State of Arkansas, between the United States Fish and Wildlife Service, U.S. Department of the Interior, and the Arkansas State Game and Fish Commission. Hereinafter, the parties shall be referred to as “USFWS” and “Commission”, respectively,

WHEREAS, the Congress of the United States has found that there are resident species of fish and wildlife which are in danger of extinction or in danger of extinction in the foreseeable future, and that these species of fish or wildlife are of aesthetic, ecological, educational, scientific, economic, and other value to the Nation and its people;

WHEREAS, the purposes of the Act are to provide a means to encourage the protection and conservation upon which endangered or threatened fish and wildlife depend, to provide a program for the conservation of such species, and to take such steps as may be appropriate to achieve the purposes of the various treaties and conventions related to the conservation of fish and wildlife;

WHEREAS, the Congress of the United States has declared that encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation’s national and international commitments and to better safeguarding, for the benefit of all citizens, the Nation’s heritage in its fish and wildlife;

WHEREAS, the Secretary of the Interior has delegated his responsibilities under the Act to the Director, USFWS; who, in turn, has delegated such responsibilities to the respective Regional Directors of the Service;

WHEREAS, the Southeast Regional Director, USFWS, desires to enter this cooperative agreement for the purpose of assisting in the implementation of the endangered, threatened, and at-risk* species conservation program of the state of Arkansas;

WHEREAS, the State of Arkansas, acting through the Commission, wishes to administer its program for the conservation of certain agreed upon endangered, threatened and at-risk fish and wildlife species in accord with the terms and spirit of the Act;

WHEREAS, the Southeast Regional Director, USFWS, has the statutory and administrative responsibility to establish programs for the conservation of endangered, threatened, or at-risk fish or wildlife; to reach agreement with the Commission as to which resident endangered, threatened, and at-risk fish and wildlife species are most in need of a conservation program in

the State of Arkansas; to provide periodic review of the approved State program at no greater than annual intervals; to provide funding to that program as such funding is available and in accordance with the terms of the Act; to provide coordination among the programs of the various states; and to exchange with the Commission such biological data or other information as may result in the enhancement of the opportunities for the continued survival of endangered, threatened, or at-risk fish and wildlife;

WHEREAS, the Commission has accepted the responsibility to conserve endangered and threatened (as defined at 50 CFR Part 81 (40 FR 47509), or at-risk fish and wildlife which are resident in the State of Arkansas;

WHEREAS, the Commission (a) has the authority to conserve resident fish and wildlife determined by the Commission or the Secretary to be endangered, threatened, or at-risk; (b) has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident fish and wildlife in the State which are deemed by the Secretary or Commission to be endangered, threatened, or at-risk and has furnished a copy of such a program together with all pertinent details, information, and data requested by the Secretary; (c) has the authority to conduct investigations to determine the status and requirements for survival of resident fish and wildlife; (d) has the authority to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered, threatened, or at-risk fish and wildlife.

Now therefore the parties agree as follows:

1. Cooperative Program

- a) The Commission will carry out the activities identified in the program, as funding will allow, for the benefit of the endangered, threatened, or at-risk fish and wildlife which are resident in the State of Arkansas.
- b) The Southeast Regional Director, USFWS, may agree with the Commission to provide financial assistance for the implementation of an acceptable project for the conservation of endangered, threatened, or at-risk fish and wildlife. Such financial assistance will require the submission of an Application for Federal Assistance and the successful negotiation of a Project Agreement. These will comply with the Secretary's Rules and Regulations, 50 CFR Part 81, and current USFWS policy.
- c) As a part of this cooperative program, the law enforcement authorities of USFWS and the Commission shall cooperate in the detection, apprehension, and prosecution of violators of the Act or State law intended to conserve endangered, threatened fish and wildlife.

- d) In the event additional species of resident fish or wildlife in the State of Arkansas are listed as endangered, threatened, or at-risk by the Commission or USFWS, the parties agree to cooperate in the development of programs and projects for the benefit of such species.
- e) It is understood that any Federal funding pursuant to section 6(d) of the Act is contingent on the continued implementation of an adequate and active program for the conservation of endangered, threatened (as defined at 50 CFR Part 81), or at-risk fish and wildlife which are resident in the State of Arkansas,. If the program for the conservation of such fish and wildlife is determined by the Southeast Regional Director, USFWS, to be inadequate or inactive, this Agreement and funding shall be terminated in accordance with section 5 or 7 of this Agreement.
- f) As part of the consultation process, provided for by Section 7 of the Act, for the determination of critical habitat for endangered or threatened fish and wildlife, the parties agree to exchange biological and other data as necessary to facilitate such determination by the Director, USFWS.

2. Permits

a) General Rule

The Commission agrees not to engage in, or issue a permit authorizing, the taking of resident endangered or threatened fish or wildlife as defined at 50 CFR Part 81 (40 FR 47509), without prior issuance of a permit to the applicant by the USFWS, except as authorized in subsection 2(b), (c), or (d) of this Agreement, or pursuant to a special rule in 50 CFR §§ 17.40-48.

b) Endangered Species

Any qualified employee or agent of the Commission who is designated by the Commission for such purposes, may, when acting in the course of his official duties, take any native Federally-listed endangered fish or wildlife for conservation purposes that are consistent with the purposes of the Act, and with this Cooperative Agreement or any Project Agreement attached hereto, provided that such taking is not reasonably anticipated to result in:

- (1) the death or permanent disabling of the specimen;
- (2) the removal of the specimen from the State of Arkansas;
- (3) the introduction of the specimen or any of its progeny beyond the historical range of the species; or
- (4) the holding of the specimen in captivity for a period of more than 45 consecutive days.

c) Threatened Species

Any employee or agent of the Commission who is designated by the Commission for such purposes may, when acting in the course of his official duties, take any native Federally –listed threatened fish or wildlife for conservation purposes that are consistent with the purposes of the Act, or this Cooperative Agreement or any Project Agreement attached hereto; provided, however, that the authority conveyed to the Commission by this subsection may, at any time, be temporarily suspended for a particular project or conservation program by written notification from the Southeast Regional Director, USFWS, upon his receipt of substantial evidence demonstrating the use of this authority for purposes inconsistent with the purposes of the Act. Upon notification of the temporary suspension and the reasons therefor, the Commission may request from the Director, USFWS, an opportunity to demonstrate compliance with the purposes of the Act. The Director will promptly consider the evidence so submitted by the Commission and either reaffirm the conclusion of the Regional Director, USFWS, and revoke the authority temporarily suspended pursuant to this subsection, or reverse the conclusion of the Regional Director, USFWS, and reinstate the authority temporarily suspended.

d) Emergency Provisions

In accordance with 50 CFR 17.21(c)(3) any employee or agent of the Commission who is designated by the Commission for such purposes may, when acting in the course of his official duties, take endangered or threatened fish or wildlife without a permit if such action is necessary to:

- (1) aid a sick, injured, or orphaned specimen; or
- (2) dispose of a dead specimen; or
- (3) salvage a dead specimen which may be useful for scientific study; or
- (4) remove specimens which constitute a demonstrable but non-immediate threat to human safety, provided that the taking is done in a human manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live capturing and releasing the specimen unharmed in a remote area; or
- (5) defend his own life or the lives of others.

Section 3 of the Act defines ‘take’ as “... to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct.”

Any taking pursuant to subsection 2(d) must be reported in writing within five (5) days to the Service’s law enforcement division. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the USFWS.

3. Records and Information

The Commission agrees to maintain records of:

- (1) the Federally-funded projects for the conservation of endangered, threatened, or at-risk fish or wildlife in accordance with this Agreement; and (2) the number of specimens of each species of Federally-listed endangered or threatened fish or wildlife taken by Commission employees or agents pursuant to 50 CFR §17.21 (c)(5) or § 17.31 (b) as amended, the conservation purposes for which they were taken, and any mortalities or permanently disabling injuries resulting from the taking.
- (2) Information included in agency-specific Commission and Service files (including, but not limited to, reports, data, maps, expert opinion of our respective staff, etc.) is considered to be held “in common” and is covered by the data sharing agreement for the purposes of fulfilling our obligation to conserve the nation’s fish, wildlife, plants and their habitats-including the administration of, and/or compliance with, the Endangered Species Act of 1973 and all regulatory authority granted the Commission by and through Amendment 35 to the Arkansas State Constitution.

4. Notification

The Commission agrees to promptly inform the USFWS of any change in circumstances which could cause the program to be out of conformance with the requirements of section 6(c) of the Act. Included without limitation are changes in the Commission’s relevant constitutional, statutory, or regulatory authority. The Commission shall promptly furnish to the USFWS an assessment of the effect of such a change on the Commission’s ability to remain in compliance with the requirements of section 6(c) of the Act. The Southeast Regional Director, USFWS, agrees to notify the Commission of all regulations and rulemakings, in accordance with section 4 of the Act, which might affect the Commission’s conservation program.

5. Effective Date and Renewal

- (a) Not less than annually and prior to May 30 of each year, the Arkansas Ecological Services Field Office will provide the Commission with an updated list of petitioned, proposed, and candidate species occurring in the state to be incorporated in the list of endangered, threatened, or at-risk fish or wildlife.
- (b) This Agreement shall become effective when signed by the Southeast Regional Director, USFWS, and the Director of the Commission and may be renewed in the following manner: Not later than June 30 of each year, the Commission shall submit to the USFWS the following items: (1) addition and deletions to the list of

Federal and State-listed endangered, threatened, or at-risk fish or wildlife which are resident in the State; (2) a memorandum of law analyzing any changes in the Commission's statutory authority for endangered, threatened, or at-risk fish or wildlife which were made since the date of the previous program submission and also analyzing the application of State law to any resident fish and wildlife which have been added to the Federal endangered and threatened species list since the date of the previous program submission; (3) a list of any substantial changes in the endangered and threatened fish and wildlife conservation programs since the date of the previous program submission; (4) a detailed description of the number of specimens of each species of endangered or threatened fish or wildlife taken by Commission employees or agents pursuant to 50 CFR §§ 17.21(c) or 17.31(b) as amended, the conservation purposes for which they were taken, and any mortalities or permanently disabling injuries resulting from the taking; and (5) copies of such reports as the Commission has prepared since the previous program submission which discussed their conservation program accomplishment for resident endangered, threatened, or at-risk fish or wildlife.

- (c) The USFWS will, on or before October 1 of each year, notify the Commission in writing either that the Cooperative Agreement is renewed effective October 1 of that year, or that the Commission's endangered, threatened, or at-risk fish or wildlife conservation program or authorities are not in compliance with the criteria of section 6(c) of the Act, and unless appropriate changes are made by June 30 of the following year, this Agreement shall be terminated. If the Commission has not received notification concerning the renewal of this agreement by October 1 of each year, it shall continue in force and effect as if it renewed.
- (d) For purposes of this Agreement, the phrase "previous program submission" means either the program submission of (1) the original Cooperative Agreement or (2) the most recent renewal application for the Cooperative Agreement, whichever is later in time.

6. Amendment

This Agreement may be amended at any time with the concurrence of the signatory parties.

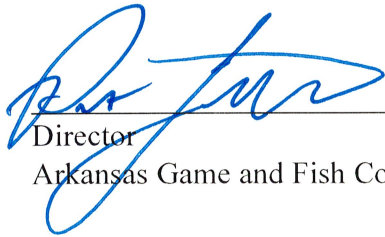
7. Termination

This Agreement may be terminated: (a) by mutual agreement; (b) by the Commission upon 60 days written notice to the USFWS; or (c) notwithstanding the renewal provisions in section 5(c) of this Cooperative Agreement, by the USFWS upon 60 days written notice to the Director of the Commission from the Regional Director, USFWS, stating that the Commission's endangered, threatened, or at-risk fish and

wildlife conservation program is no longer in compliance with the criteria of section 6(c) of the Act or that the Commission has violated a provision of this Agreement. The Commission may submit a written request for review to the Director, USFWS, within 30 days of receipt of the termination notice. The Director, USFWS, will consider all evidence submitted by the Commission in its request for review and either reaffirm the conclusion of the Regional Director and terminate this Agreement at the end of the 60-day notification period, or reverse the conclusion of the Regional Director and revoke the notice of termination. All Federal funds which have been obligated to, but not expended by, the Commission as of the date of the termination notice shall be retained by the USFWS for reallocation pursuant to section 6(d) of the Act, unless: (1) those funds are specifically approved by the Regional Director for expenditure before the date of actual termination; or (2) the notice of termination is revoked by the Director, USFWS.

Signed

Southeast Regional Director
U.S. Fish and Wildlife Service



Director
Arkansas Game and Fish Commission